IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.3756 OF 2006

Handicrafts Development
Corporation of Kerala Ltd. ...Petitioner.

Vs.

Rajendra Somani & Ors. ...Respondents.

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Mr.Mahesh Menon for the Petitioner.

Mr.S.M. Kazi for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 7, 2006.

P.C. :

1. Mentioned, not on Board. By consent taken on Board for hearing.

2. A decree for eviction which was passed against the Petitioner has been confirmed in appeal by the Appellate Bench of the Court of Small Causes on 2nd

March 2006.

3. The termination of tenancy took place by a letter dated 16th May 2000. The finding against the Petitioner is that in view of the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, the Petitioner which is a corporate body with a paid up share capital of over Rs.1 crore, is not protected by the Rent Control legislation.

4. The point which has been canvassed on behalf of the Petitioner is that the Petitioner can be regarded as being part of the 'government' and hence falls within the protection of the Act, by virtue of the provisions of Section 3(1)(a). The submission is unfounded. Section 3 of the Act is as follows :

> "3. Exemption.
>
> (1) This Act shall not apply-
>
> (a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence

or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Explanation.- For the purpose of this clause

the expression "bank" means,-

(i) the State Bank of India constituted under the State Bank of India Act, 1955;

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iii) A corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and transfer of Undertaking) Act, 1980; or

(iv) any other bank, being a scheduled bank as defined in clause (e) of Section 2 of the Reserve Bank of India Act, 1934.

(2) The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-

(i) to premises used for public purpose of a charitable nature or to any class of premises used for such purposes;

(ii) to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;

(iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or

(iv) to premises belonging to or vested in an university established by any law for the time being in force.

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected or any land held by any person from the Government or a

> local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof."

5. The Petitioner is a company registered under the provisions of the Companies Act, 1956 and, as a corporate body, has a distinct corporate personality of its own. Section 3(1)(b) specifically provides that the Act shall not apply to the premises let or sublet *inter alia* to any Public Sector Undertaking or any Corporation established by or under any Central or State Act, or to private or public limited Companies having a paid up capital of more than Rs.1 crore. A Company incorporated under the provisions of the Companies Act, 1956 is not government even if its share capital is held by Government. In **Western Coalfields Ltd. v. Spl. Area Development**

Authority (AIR 1982 SC 697) the Supreme Court observed thus:

> "Even though the entire share capital of the appellant companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies, the Government of India only owns the share capital."

The Supreme Court relied upon its earlier decision in (i) **Rustom Cavasjee Cooper v. Union of India** (AIR 1970 SC 564); (ii) **Heavy Engineering Mazdoor Union v. The State of Bihar** (AIR 1970 SC 82) and (iii) **Andhra Pradesh State Road Transport Corporation v. Income-tax Officer** (AIR 1**964 SC** 1486). Admittedly, the paid up share capital is in excess of Rs.1 crore.

6. There is hence, no merit in the petition. The

Petition is accordingly dismissed.

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